

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) CRIMINAL NO. 17-00582JMS-RLP
Plaintiff,) Honolulu, Hawaii
vs.) May 30, 2018
KATHERINE P. KEALOHA (1),) A & P to the Second
aka Katherine E. Kealoha,) Superseding Indictment
aka Kathy Kealoha,)
aka Kat, aka Alison Lee Wong,)
LOUIS M. KEALOHA (2),)
Defendants.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE J. MICHAEL SEABRIGHT
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government MICHAEL G. WHEAT, ESQ.
(By phone): ERIC J. BESTE, ESQ.
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For Defendant RUSTAM A. BARBEE, ESQ.
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1 Official Court Cynthia Fazio, RMR, CRR, CRC
2 Reporter: United States District Court
3 300 Ala Moana Blvd., C-270
 Honolulu, Hawaii 96850

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Proceedings recorded by machine shorthand, transcript produced
with computer-aided transcription (CAT).

1 WEDNESDAY, MAY 30, 2018 10:23 A.M.

2 THE COURTROOM MANAGER: Criminal 17-582JMS-RLP, United
3 States of America versus defendant one, Katherine P. Kealoha,
4 and defendant two, Louis M. Kealoha.

5 This case has been called for an arraignment and plea
6 to the second superseding indictment.

7 Counsel, please make your appearances for the record.

8 MR. WHEAT: Michael Wheat, Eric Beste and Janaki
9 Gandhi for the United States. Good morning, Your Honor.

10 THE COURT: Yes, good morning to all three of you.

11 MS. KAGIWADA: Good morning, Your Honor. Cynthia
12 Kagiwada on behalf of Katherine Kealoha. Ms. Kealoha is
13 present at counsel table.

14 THE COURT: All right. Good morning to both of you.

15 MR. BARBEE: Good morning, Your Honor. Rustam Barbee
16 appearing with Louis Kealoha. He's present in court.

17 THE COURT: All right. Thank you. Good morning to
18 both of you. You may be seated. Thank you.

19 All right. So we do have the second superseding
20 indictment. Let me start with you then, Ms. Kagiwada.

21 MS. KAGIWADA: Yes. I have reviewed the second
22 superseding indictment with Ms. Kealoha. She understands the
23 charges and would request that we either confirm or set the
24 trial dates for this matter.

25 THE COURT: Okay. So -- and you enter pleas of not

1 guilty?

2 MS. KAGIWADA: And she enters a plea of not guilty and
3 we waive a public reading of the indictment.

4 THE COURT: Okay. Thank you. Mr. Barbee?

5 MR. BARBEE: Likewise, Your Honor. I've gone over the
6 second superseding indictment with Mr. Kealoha. We'd waive a
7 public reading of the same at this time. He would enter pleas
8 of not guilty.

9 THE COURT: All right. All right. So pleas of not
10 guilty will be entered on behalf of both defendants. We
11 will -- we have a trial date set out a ways. So we'll keep
12 that trial date and all of the associated dates that have
13 already been set.

14 One thing I did talk to the Clerk's Office about,
15 because I fear a little bit of confusion could creep in with
16 having one case number but two different cases. So I've gotten
17 a new case number for this matter. I need to talk to the
18 Clerk's Office whether we can export everything that's already
19 in the old case over to this or if we just do an entry as sort
20 of one of the first entries referring to the old case number.
21 But I thought it would make more sense. I think it's going to
22 get hard for all counsel to, in the two separate trials, have
23 one docket. So I thought it's best to have two dockets going
24 forward.

25 So, we're going to give this a new case number.

1 Everything in this case for this trial going forward would be
2 filed in that number, under that number.

3 In the other matter, that is the other trial, would be
4 filed under the old case number. Does that work for everybody?

5 MR. WHEAT: For the United States, yes.

6 THE COURT: Ms. Kagiwada?

7 MS. KAGIWADA: Yes. I believe that would work.

8 THE COURT: Okay. You look like you're not sure. Is
9 there a concern? I mean if you have a concern let me know.
10 It's really more process than anything.

11 MS. KAGIWADA: Yes, so that's fine.

12 THE COURT: There's nothing substantive about it. It
13 doesn't impact dates, it doesn't impact anything, it's just a
14 number.

15 MS. KAGIWADA: That's fine.

16 THE COURT: Okay. Mr. Barbee?

17 MR. BARBEE: Yes, Your Honor, that's fine with us. It
18 still leads to a little bit of confusion, at least in my mind,
19 and I might be the only one, but we've got the three
20 indictments out there, the first one has a vacated trial date,
21 the second one has firm trial dates, and now this third one, I
22 guess it's the Court's position that for the second superseding
23 indictment we'll keep the November trial date?

24 THE COURT: Right. So let's call this the bank fraud.
25 I understand there's a new charge.

1 MR. BARBEE: Right.

2 THE COURT: And, you know, if there are motions on
3 that or not, I don't know, but I'm not taking that up right
4 now. But I'm looking at it as two trials. One trial are the
5 Kealohas alone. The second trial are going to be the Kealohas
6 and the others. And that's how the case was severed, right?
7 Then we have a superseding that changes a little bit the case
8 of the two Kealohas alone.

9 MR. BARBEE: Right.

10 THE COURT: But the trial date that's going forward
11 here is the date that we set for the two of them alone in
12 November and associated dates.

13 MR. BARBEE: Right. Could I inquire, and maybe the
14 government may or may not want to respond, but is there a plan
15 for a dismissal?

16 THE COURT: I was going to get to that. You're
17 getting ahead of me, but I'm with you. Okay.

18 So the new case number is going to be 18-00068.
19 That's just next in line that I had them freeze for us, okay.
20 JMS-RLP. Judge Puglisi will be assigned to this as well.
21 Okay?

22 And I'll figure out if I just want to put an entry in
23 there referring to the other docket number for everything filed
24 before this or if we can just import everything. I'm not quite
25 sure yet how -- I have to talk to IT and the Clerk's Office and

1 figure that out. Okay?

2 But anything in this case, meaning this indictment
3 now, okay, what's called the second superseding indictment,
4 okay, going forward should be filed in the 18-68 number. Okay?
5 Everyone understand?

6 MS. KAGIWADA: Yes, that's fine.

7 MR. WHEAT: Yes.

8 MR. BARBEE: Yes, Judge.

9 THE COURT: Okay. All right. And then, Mr. Wheat, as
10 far as the old indictment then -- and when I say the "old
11 indictment," I mean the 17-582 indictment that had everybody
12 and all counts combined, I assume you're going to be filing a
13 dismissal of certain counts in that.

14 MR. WHEAT: Of certain counts, correct.

15 THE COURT: Okay. So can you do that by the end of
16 this week?

17 MR. WHEAT: Yes.

18 THE COURT: It would just be a notice of dismissal,
19 right? That's all we need.

20 MR. WHEAT: Correct.

21 MR. BARBEE: So it would be, Your Honor, for both the
22 initial indictment and the first superseding, the dismissal of
23 counts that are redundant with this indictment?

24 THE COURT: Okay. Say that again, Mr. Barbee?

25 MR. BARBEE: There's three indictments. So I guess

1 the dismissal of counts would be for --

2 THE COURT: Well, the initial indictment's been
3 superseded, right? So that's not important anymore. It's the
4 operative indictment that names everybody that's still
5 effective that they need to move to dismiss the counts that are
6 now contained in 18-68.

7 MR. BARBEE: Right. But the initial indictment, it
8 wasn't my understanding that that was dismissed.

9 THE COURT: It's not, but by law it's effectively
10 overridden. It's no longer effective when the superseding
11 indictment is filed.

12 MR. BARBEE: Okay. Is that -- does the government
13 agree with that position? Because I -- I'm not sure --

14 THE COURT: Well, I'm the law here and I'm telling you
15 the law.

16 MR. BARBEE: I understand.

17 THE COURT: All right. So that's what it is. Okay?

18 MR. BARBEE: Okay. Got it.

19 THE COURT: You don't object to that, right,
20 Mr. Wheat?

21 MR. WHEAT: I do not.

22 THE COURT: All right. Good.

23 MR. BARBEE: The first indictment is gone and they're
24 going to file a dismissal for counts that are redundant from
25 the first superseding.

1 THE COURT: Right. And the other thing that I believe
2 they're going to do based on I believe it was Mr. McDonald, but
3 I'm not real sure, who said earlier they had taken to heart my
4 comments about some of the Pinkerton charges. So some of those
5 other charges may get dismissed. It may not deal with your
6 clients, I don't know, but against some of the other defendants
7 in the other indictment.

8 MR. BARBEE: Right.

9 THE COURT: All right. I know that's all a little bit
10 messy, but I think we're relatively clear where we are.

11 MR. WHEAT: Yes.

12 THE COURT: Ms. Kagiwada, you still look a little --

13 MS. KAGIWADA: No, I just have a question about
14 scheduling when we get to that, Your Honor.

15 THE COURT: Okay. All right. So to be clear then,
16 what is referred to as the second superseding indictment, which
17 is the indictment listing Katherine Kealoha as defendant number
18 one and Louis Kealoha as defendant number two, that was
19 returned by the grand jury on May 24th of 2018, going forward
20 will be Criminal Case Number 18-00068JMS-RLP. The first
21 superseding indictment which names all six defendants, there
22 will be -- by the end of this week the government will file a
23 dismissal as to certain of those counts to clean up,
24 essentially, that indictment because of the indictment that's
25 been returned today. I'm sorry, the defendants are being

1 arraigned on today, okay? So we'll have two separate
2 indictments. The trial dates will stay the same, what was it,
3 November and February?

4 MR. BARBEE: November and March.

5 THE COURT: November and March. So the 18-00068 will
6 be the November date. The 17-582 will be the March date.
7 Okay? And all associated dates will remain as of this time.

8 All right. Ms. Kagiwada, I know you had some things
9 you wanted to talk about. My trial actually ended a little bit
10 early, but I told them we need to be back at 10:45. So...

11 MS. KAGIWADA: I just wanted to confirm with the
12 government what their estimate is for trial now, because they
13 have added two additional charges, two additional counts to
14 this second superseding indictment. And originally they had
15 indicated they estimated seven days of trial.

16 THE COURT: So what would this add, Mr. Wheat, a day
17 or two?

18 MR. WHEAT: Maybe a half a day at most. But I think
19 we can keep the same trial schedule that we set.

20 THE COURT: Okay. Anything else then we need to take
21 up today?

22 MS. KAGIWADA: Not at this time.

23 THE COURT: Mr. Barbee?

24 MR. BARBEE: No, Your Honor.

25 THE COURT: Mr. Wheat, anything else at this time when

1 we're all together here?

2 MR. WHEAT: No, Your Honor. Thank you.

3 THE COURT: All right. Thank you all. Court's in
4 recess.

5 (The proceedings concluded at 10:33 a.m.,
6 May 30, 2018.)

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1 COURT REPORTER'S CERTIFICATE

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3 I, CYNTHIA FAZIO, Official Court Reporter, United
4 States District Court, District of Hawaii, do hereby certify
5 that pursuant to 28 U.S.C. §753 the foregoing pages is a
6 complete, true, and correct transcript of the stenographically
7 reported proceedings held in the above-entitled matter and that
8 the transcript page format is in conformance with the
9 regulations of the Judicial Conference of the United States.

10

DATED at Honolulu, Hawaii, June 8, 2018.

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12

13 /s/ Cynthia Fazio
14 CYNTHIA FAZIO, RMR, CRR, CRC

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